

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of March, two thousand twenty-three.

PRESENT:

José A. Cabranes,
Joseph F. Bianco,
Myrna Pérez,
Circuit Judges.

Marc S. Kirschner, solely in his capacity as
Trustee of the Millenium Lender Claim Trust,

Plaintiff-Appellant,

v.

JP Morgan Chase Bank, N.A., JP Morgan Securities LLC,
Citibank, N.A., Bank of Montreal, BMO Capital Markets
Corp., SunTrust Robinson Humphrey, Inc., SunTrust Bank,
Citigroup Global Markets Inc.,

Defendants-Appellees,

Citibank Global Markets Inc.,

Defendant.

ORDER

21-2726-cv

On March 9, 2023, the Court heard oral argument in this appeal. One of the issues briefed and discussed by the parties is whether the syndicated term loan notes at issue in this appeal are securities under *Reves v. Ernst & Young*, 494 U.S. 56 (1990). We have not previously considered whether this type of note is a security. Accordingly, given the importance of the issue, the parties' diverging positions, and the policy implications that would result from our resolution of this case, we hereby solicit any views that the United States Securities and Exchange Commission may wish to share on this issue. Any comment by the Commission shall be filed no later than April 13, 2023. Upon the filing of any such comment, the parties are directed to submit a comment thereon within seven days of the Commission's filing.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court


